

# Judicial Watch

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2008 APR 15 P 12:06

April 14, 2008

**COPY**

Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

MUR # 5995

**Re: Sen. Hillary Clinton, Hillary Clinton for President, Sir Elton John**

Dear Sir or Madam:

Judicial Watch is a non-profit educational foundation that is dedicated to combating government corruption. As part of its educational mission, Judicial Watch regularly obtains and analyzes information gathered and maintained by the Federal Election Commission (FEC) and other agencies of the federal government, then disseminates its findings to the public through various educational and outreach programs, including Judicial Watch's website and monthly newsletter. The obtaining, analyzing, and disseminating of such information is a very important part of Judicial Watch's operations.

Recent news reports suggest that Sen. Hillary Clinton and Hillary Clinton for President have accepted an in-kind contribution from a foreign national, Sir Elton John, in contravention of federal election laws. On behalf of Judicial Watch and its supporters, I hereby request that the FEC investigate this matter.

On March 17, 2008, the Clinton presidential campaign issued a press release, which read in part:

Legendary artist Sir Elton John will perform at a solo concert on behalf of Hillary Clinton's campaign on April 9, 2008 at Radio City Music Hall in New York. The event, called "Elton and Hillary: One Night Only," is Elton John's first public solo concert in New York City without his band since his solo concert at Madison Square Garden in October 2000.

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'I'm not a politician but I believe in the work that Hillary Clinton does,' said John. 'I'm excited to support Hillary by performing at what will be a truly memorable night.'

Tickets start at \$125 for Mezzanine seats and \$250 for Orchestra seats. Tickets will go on sale at 9:00 am EST, on Wednesday, March 19, 2008.<sup>1</sup>

Press reports also show that on March 17, 2008, Sir Elton John, through the Clinton campaign, sent out a mass email announcing the concert and soliciting support for Hillary Clinton's presidential campaign.<sup>2</sup>

The concert took place on April 9, 2008 and raised more than \$2.5 million (from the sale of 5000 tickets) for Sen. Clinton and Hillary Clinton for President.<sup>3</sup>

On information and belief, Sir Elton John is not a citizen of the United States and is therefore prohibited from making any contribution to Sen. Clinton or her presidential committee:

**2 U.S.C. § 441e. Contributions and donations by foreign nationals**

(a) *Prohibition.* It shall be unlawful for—

(1) a foreign national, directly or indirectly, to make—

(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;

(B) a contribution or donation to a committee of a political party; or

(C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)) (2 U.S.C. § 434(f)(3)); or

<sup>1</sup> See attached Exhibit 1, March 17, 2008, Press Release, "Sir Elton John to Perform at Clinton Fundraiser on April 9<sup>th</sup>" (<http://www.hillaryclinton.com/news/release/view?tid=6565>).

<sup>2</sup> See attached Exhibit 2, "Elton John To Croon for Clinton," *The Washington Post*, March 17, 2008, ([http://blog.washingtonpost.com/the-trail/2008/03/17/elton\\_john\\_to\\_croon\\_for\\_clinto\\_1.html](http://blog.washingtonpost.com/the-trail/2008/03/17/elton_john_to_croon_for_clinto_1.html)), which reads, in part: "Elton John sent an e-mail today alerting Clinton supporters to the planned performance, including a pricing schedule that will include two tiers of showgoers, those who buy box office seats at \$125 or \$250, and those who grab choice seats at prices of \$500, \$1,000 or \$2,300 — the maximum allowed for a campaign contribution."

<sup>3</sup> See attached Exhibit 3, "The Clintons: Still 2 for the price of 1," *The Associated Press*, April 10, 2008 (<http://www.msnbc.msn.com/id/24053180/>).

(2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.

Regarding the matter of whether Sir Elton John's contribution of his services to Sen. Clinton and her presidential committee is prohibited by law, FEC spokesman Bob Biersack suggested to *The Washington Times* that a complaint would have to be filed with the FEC to help settle the issue:

Mr. Biersack said a complaint would have to be filed with the FEC before the commission could issue an advisory opinion on the Elton John concert, and even then it would remain confidential until completed.<sup>4</sup>

This same *Washington Times* article reports that a "1981 FEC decision prohibited a foreign national artist from donating his services in connection with fundraising for a U.S. Senate campaign."<sup>5</sup> (The reference may be to FEC Advisory Opinion Number 1981-51.)<sup>6</sup>

Sir Elton John's in-kind contribution of his artistic and entertainment services has substantial tangible value. The face prices of tickets for an upcoming Elton John concert in Bakersfield, California range from \$49.50-\$89.50.<sup>7</sup>

The direct involvement of Sir Elton John in Sen. Clinton's fundraising efforts (see footnote 2) also raises the additional question of whether other laws have been violated. Specifically, FEC Advisory Opinion Number 2004-26 details:

## "2. Foreign National Participation in Decision-Making

Commission regulations implementing 2 U.S.C. 441e prohibit foreign nationals from participating in the decisions of any person involving election-related activities. See 11 CFR 110.20(i). Such participation in decisions includes directing, dictating, controlling, or directly or indirectly

<sup>4</sup> See attached Exhibit 4, *The Washington Times*, Inside the Beltway, "Uh-oh," March 27, 2008, <http://www.washingtontimes.com/article/20080327/NATON02/615066787>.

<sup>5</sup> *Id.*, See attached Exhibit 4.

<sup>6</sup> See attached Exhibit 5, "Federal Election Commission Advisory Opinion Number 1981-51," printed April 14, 2008 (<http://no.pictma.com/no/no/810051.html>).

<sup>7</sup> See attached Exhibit 6, Ticketmaster web page for Elton John Tickets Rabobank Arena Theatre and Convention Center, Bakersfield, CA, April 18, 2008 (<http://www.ticketmaster.com/event/0900405B95604347?artistid=735394&majorcatid=10001&minorcatid=1>).

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participating 'in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee.' *Id.* This broad prohibition encompasses foreign national involvement in the management of any political committee, and its decisions regarding its receipts and disbursements in connection with Federal and non-Federal elections. Explanation and Justification for Regulations on Contribution Limitations and Prohibitions, 67 Fed. Reg. 69946 (Nov. 19, 2002)."<sup>8</sup>

Certainly, Sir Elton John's signing an email requesting financial contributions for a presidential candidate raises a substantial question as to whether a violation of the legal prohibition of foreign nationals participating in the decision-making of a presidential campaign has occurred.

In conclusion, Judicial Watch requests an investigation into whether Sen. Clinton, Hillary Clinton for President, and/or Sir Elton John have violated federal laws and regulations that prohibit the involvement of foreign nationals in U.S. presidential elections. The information uncovered by this investigation will be used by Judicial Watch to educate the American people about the laws governing our nation's campaign finance system.

Thank you for your prompt attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.

  
Thomas Fitton  
President

<sup>8</sup> See attached Exhibit 7, "Federal Election Commission Advisory Opinion Number 2004-26," printed April 14, 2008 (<http://eo.fec.gov/eo/eo040026.html>).


I hereby swear, to the best of my knowledge and belief, that the foregoing is true and correct.

  
\_\_\_\_\_  
Thomas Fitton

City of Washington     )  
                                  )  
District of Columbia    )     ss:

Signed and sworn to before me on this 14<sup>th</sup> day of April, 2008, by Thomas Fitton,  
President of Judicial Watch.



  
\_\_\_\_\_  
Christopher J. Farrell  
Notary Public for the District of Columbia  
My Commission expires: 11/14/09

email zip 66

more »

3/17/2008

## Sir Elton John To Perform at Clinton Fundraiser on April 9th

Legendary artist Sir Elton John will perform at a solo concert on behalf of Hillary Clinton's campaign on April 9, 2008 at Radio City Music Hall in New York. The event, called "Elton and Hillary: One Night Only," is Elton John's first public solo concert in New York City without his band since his solo concert at Madison Square Garden in October 2000.

"I'm not a politician but I believe in the work that Hillary Clinton does," said John. "I'm excited to support Hillary by performing at what will be a truly memorable night."

Tickets start at \$125 for Mezzanine seats and \$250 for Orchestra seats. Tickets will go on sale at 9:00 am EST, on Wednesday, March 19, 2008. To purchase tickets, go to [www.HillaryClinton.com/Elton](http://www.HillaryClinton.com/Elton) or call the campaign office at 212-213-3717.

In his four decade career, Elton John has been one of the dominant forces in rock and popular music, especially during the 1970s. He has sold more than 250 million albums and over one hundred million singles, making him one of the most successful artists of all time. He has won five Grammy awards and one Academy Award. John was inducted into the Rock and Roll Hall of Fame in 1994. He is a worldwide activist and humanitarian for a variety of issues including HIV/AIDS, breast cancer and human rights to name a few. In 1992, John founded the Elton John AIDS Foundation and was knighted in 1998.

Hillary Clinton Reacts to President Bush's Address on Iraq  
4/10/2008

Hilldate: Commander-in-Chief on Day One  
4/10/2008

Hillary Clinton Statement On Sen. McCain's Housing Plan  
4/10/2008

Montana for Hillary Launches State Steering Committee  
4/9/2008

Hillary Clinton Announces 71 Member LGBT Pennsylvania Steering Committee  
4/9/2008

Hillary Clinton Calls on President Bush to Outline the Military End Game in Iraq  
4/9/2008

Hillary Clinton Supporters Criss-Cross Pennsylvania  
4/9/2008

Hilldate: Commander-in-Chief on Day One  
4/9/2008

Hillary Clinton Outlines Solutions to Strengthen America's Military  
4/9/2008

Hillary Outlines Ambitious 'Blueprint for Indiana's Economic Future'  
4/9/2008

Statement from Hillary Clinton on the ICE Halloween Party Cover-Up  
4/9/2008

Statement from Hillary Clinton Commanding Prime Minister Gordon Brown  
4/9/2008

Hillary Clinton Statement on Bush Heritage Plan  
4/9/2008

Clinton Campaign Unveils Radio Response To Bat the Record Straight on Discredited Obama Ad  
4/9/2008

Clinton Responds to FDA Tripling Its Estimates For Heparin-Related Deaths  
4/9/2008

Paid for by Hillary Clinton for President

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On Economy, Obama Stands His Messages  
'Bitter' Is a Hard Pill For Obama to Swallow  
Illinois Governor in Routine Trial in Spotlight

## Elton John to Croon for Clinton

Elton John to Croon for Clinton

Just as the Barack and Michelle Obama's wedding was dying down, Elton John has stepped in to fill the space. We count at least six featured acts in his defense of his wife's Team Obama. ( 5:38 PM ET) | More >

### THIS JUST IN

#### Obama Concedes He Misspoke

As his political opponents heap on scorn, Sen. Barack Obama acknowledged that he chose his words poorly when describing small-town Pennsylvanians at a fundraiser on Sunday. But he didn't back off the message he had sought to convey. —Blaise H. Murray | More >

#### Obama Calls Small-Town Pennsylvanians 'Bitter'

Sen. Hillary Clinton criticized Sen. Barack Obama for a comment the Illinois senator made at a fundraiser in San Francisco earlier this week in which he referred to voters in Pennsylvania as "bitter." —Patty Swan Jr. | More >

#### Will Halt in Troop Withdrawals Give Dems Flexibility?

What if Bush's decision to suspend troop withdrawals from Iraq is actually doing a favor for a future Democratic president? What if, intentionally or not, he is giving a President Obama or a President Clinton more running room come January 20? —Peter Baker | More >

## Elton John to Croon for Clinton



Elton John croons as he performs to 6,000-plus fans as part of his world tour in Guelph, Ontario, on Sunday March 2, 2008. (AP.)

By Matthew Mosk  
Sing on, Elton John.

The British pop icon — who was knighted by HM Queen Elizabeth II — announced today he will be performing to raise money at a Hillary Clinton fundraiser April 9 at Radio City Music Hall in New York. And, lest there be any concern about a non-citizen thereby making an in-kind donation, the Federal Election Commission says it hasn't objected to this type of foreign aid in the past.

Musicians are permitted to donate their time and talents to assist candidates, even when the performers hail from foreign soil, said Bob Biersack, an FEC spokesman.

"If you volunteer your services, then under the regulations that's not a contribution," Biersack said.

The only legal hitch — the Clinton campaign will need to pay the cost of putting on the show, including lighting, make-up, staging and venue costs, Biersack said.

But the campaign should have no trouble covering any costs. Elton John sent an e-mail today alerting Clinton supporters to the planned performance, including a pricing schedule that will include two tiers of showgoers, those who buy box office seats at \$125 or \$250, and those who grab choice seats at prices of \$500, \$1,000 or \$2,300 — the maximum allowed for a campaign contribution.

Radio City seats about 6,000 people, so there is potential for a sizable infusion of cash for the Clinton campaign, which has been trailing rival Barack Obama in fundraising.

Ever the promoter, the pop star wrote in his e-mail, "I promise this will be one night that you won't want to miss."

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## The Clintons: Still 2 for the price of 1

By CHARLES BABINGTON

Associated Press Writer

The Associated Press

updated 2:51 p.m. ET, Thurs., April 10, 2008

PITTSBURGH - She can implicitly criticize him and publicly embrace him, sometimes in the same day. But Sen. Hillary Rodham Clinton cannot escape the shadow of her husband, the former president whose huge personality and fame sometimes threaten to overwhelm her efforts to control the daily message and tone of her presidential campaign.

This week's events in Pennsylvania bolstered the view that Bill Clinton is his wife's greatest asset and perhaps her biggest encumbrance.

The only Democrat to win the presidency in three decades, he brings his renowned political instincts and insights to her private strategy sessions and to public stages, where he is a crowd-pleasing surrogate that her rivals cannot match. He also brings baggage.

It begins, of course, with his White House sex scandal and subsequent impeachment. But it extends to areas that many Democrats would not have anticipated.

The usually silver-tongued Arkansan has erupted at times, blurring out racially tinged remarks that have angered many blacks, a key constituency of his wife's Democratic rival, Sen. Barack Obama.

And his presidential record is proving to have two edges. Hillary Clinton embraces his economic legacy, but increasingly distances herself from his trade policies, a hot issue in the April 22 Pennsylvania primary.

The family cross currents resurfaced on Wednesday. In the space of a few minutes, the New York senator implicitly criticized her husband's stand on trade with Colombia, then lauded his economic record and campaign skills.

The day culminated with mutual praise, a hug and a kiss in front of 5,000 people, as the Clintons introduced Elton John for a concert at New York's Radio City Music Hall that raised \$2.5 million for her campaign.

Driving the latest intra-family tension is the anger that many Pennsylvania voters and union leaders feel toward trade policies that they blame for shipping U.S. manufacturing jobs overseas. Acknowledging that her husband supports the Colombia Free Trade Agreement, which she opposes, Sen. Clinton said in a stop near Pittsburgh: "I have a long record of being on a different attitude toward trade than my husband does."

She provided few examples beyond the Colombia pact, but added: "I don't think any married couple I know agrees on everything. And we disagree on this."

Her opposition to the Colombia proposal seemed to imply a callousness on the part of those who back it, including her husband. She said she opposes it "because of the history of suppression and targeted killings of labor organizers in Colombia."

Moments later, the senator could hardly praise her husband enough. Asked about their daughter Chelsea's quip that her mom would be a better president than her dad, she replied: "I think I have two great surrogates, and I only hope to be able to amass the economic record for our country that my husband did."

Hillary Clinton's campaign has been inextricably entwined with her husband's legacy from the start. She cites her eight years as first lady as vital training for the top job. And the strong opinions many Americans hold for her, positive and negative, often stem from those days, when she delved deeply into health care and endured the embarrassment of her husband's affair with a White House intern.

Surprisingly, given that Bill Clinton was famously called the nation's "first black president," the biggest problems he has caused his wife's campaign involve black voters. Black Democrats' support of Obama did not become so lopsided until he won heavily white Iowa, followed by a key win in South Carolina, where Bill Clinton angered some blacks with comments before and after the primary. He first said his wife was likely to lose South Carolina because so many blacks would back Obama.

After Obama won by a bigger margin than expected, the former president noted that Jesse Jackson also had

won South Carolina's primary, in 1984 and 1988. Many saw the remark as a bid to marginalize Obama as someone who could not appeal much beyond black constituencies.

Whatever its impact, it preceded a period in which Obama's black support reached 90 percent in some states while his margin among whites fell.

Bill Clinton has angrily rejected claims that he was being racially divisive, although his remarks sometimes furthered the dispute. In March, he said the notion that he unfairly criticized Obama was "a total myth and a mugging."

"They made up a race story out of that," he said of the news media, calling it "a bizarre spin."

Hillary Clinton's eventual win or loss this year will, inevitably, be placed partly at her husband's feet. At the Elton John concert, he kept his message simple and adoring.

"She can win this nomination," he said, urging the crowd to resist calls for his wife to drop out. Then, paying her perhaps the biggest compliment he can, he said he agreed with Chelsea that her mother would be a better president than her dad.

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## Article published Mar 27, 2008 **Inside the Beltway**

March 27, 2008

by John McCaslin - Uh-oh (*Updated 2:05 p.m.*)

**Sen. Hillary Rodham Clinton's campaign says it "has complied with the law" surrounding a fundraising concert that Elton John is scheduled to perform on April 9 in New York City on behalf of the Democratic presidential candidate.**

The statement came after Inside the Beltway earlier today questioned whether the New York senator and the British pop music star were violating the Federal Election Campaign Act (FECA), which seeks to "minimize foreign intervention" in U.S. elections by establishing a series of limitations on foreign nationals.

The FECA "prohibits any foreign national from contributing, donating or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly. It is also unlawful to help foreign nationals violate that ban or to solicit, receive or accept contributions or donations from them. Persons who knowingly and willfully engage in these activities may be subject to fines and/or imprisonment."

"There are a series of advisory opinions issued over the years surrounding situations kind of like this, but not exactly like this," FEC spokesman Bob Biersack told Inside the Beltway earlier. "That's the problem with an advisory opinion — they're not the same, but they do provide some sense of where the commission stands."

Today, however, Mr. Biersack called attention to an FEC opinion from 2004 (No. 2004-26) that dealt with a Guatemalan national who became engaged to a U.S. congressman and sought guidance on volunteering for his election campaign.

■ **Bellantoni on the Democrats:** Chelsea buys tickets for Elton concert with her & Mom

■ **Interactive:** AP fact check: Clinton Bosnia trip

■ **Interactive:** Obama on his pastor & race by the numbers

In that specific case, the FEC ruled that Zury Rios Soes could be involved in Florida Rep. Jerry Weller's campaign, provided she not be compensated or else help manage or participate in decisions of his campaign committee.

By contrast, an earlier 1981 FEC decision prohibited a foreign national artist from donating his services in connection with fundraising for a U.S. Senate campaign.

"Since 1987, the FEC has consistently held that foreign nationals may volunteer their time for campaigns on an

uncompensated basis," Mrs. Clinton's campaign said in its statement. "Elton John is simply volunteering his uncompensated time to appear at the concert."

Mr. Biersack said a complaint would have to be filed with the FEC before the commission could issue an advisory opinion on the Elton John concert, and even then it would remain confidential until completed.

#### Set himself up

"Wait a minute," writes inside the Beltway reader Mitch Moschetti of Mills River, N.C., after reading our item this week on Elton John performing a fundraising concert in New York next month on behalf of Sen. Hillary Rodham Clinton's presidential campaign.

"Didn't Elton John say this country was racist for failing to support a black contestant a couple years ago on 'American Idol'?"

Good memory, Mitch. Indeed, Sir Elton did decry the voting process of the "American Idol" TV show as racist, despite the fact that the votes for the contestants are phoned in by the American public.

"The three people I was really impressed with — and they just happened to be black, young female singers — all seem to be landing in the bottom three," the British pop singer complained back in 2004. "They have great voices. The fact that they're constantly in the bottom three — and I don't want to set myself up here — but I find it incredibly racist."

#### Dine and dish

Saying that too many political fundraisers are hosted by Washington lobbyists and filled with representatives of special interests, Sen. Barack Obama will choose four ordinary Americans for what his campaign is calling an intimate dinner with the candidate.

The only catch is you must first make a donation in any amount to his campaign between now and 11:59 p.m. Monday, March 31. The four winners then will get to sit down with the presidential candidate and talk about the issues most important to them.

~~Who pays for the diners' transportation to the dinner was not spelled out:~~ The Obama campaign will pay transportation costs for those attending the dinner.

• John McCain can be reached at 202/636-3284 or [jmccain@washingtontimes.com](mailto:jmccain@washingtontimes.com).

29044230301

# Federal Election Commission Advisory Opinion Number 1981-51

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January 29, 1982

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-51

William C. Oldaker

Attorney at Law

1050 17th Street, N.W.

Washington, D.C. 20036

Dear Mr. Oldaker:

This refers to your letter of October 20, 1981, requesting an advisory opinion on behalf of the Metzenbaum for Senate Committee ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to acceptance by the Committee of volunteer services donated by an individual artist who is a foreign national.

Your letter indicates that the Committee contemplates obtaining a donation of volunteer services from an artist who is a foreign national. The artist will create for the Committee an original work of art that will be used for fundraising purposes by the Committee. You explain that the artist will create for the Committee "an original work of art by handpainting a number of gouaches which are then reproduced in limited editions as a unique Work of art by a unique process by persons working under the artist's supervision." The artist proposes to allow the Committee to produce a limited edition from the original works of art (gouaches) created him, with the Committee to pay all costs of production.

The first question you ask is whether an individual who is a foreign national, according to the definition in 2 U.S.C. SS 441e, may volunteer his services to the Committee to the same extent as would be permitted under the volunteer services exception in 2 U.S.C. SS 431(8)(B)(i). As you know, SS 441e prohibits any person who is a foreign national from making "any contribution of money or other thing of value" in connection with any election to any political office. It is also unlawful for any person to solicit, accept, or receive any prohibited contribution from a foreign national. The current prohibition on contributions by foreign nationals had its origin in the Foreign Agents Registration Act

Amendments of 1966. Pub. L. No. 89-486, SS 8, 80 Stat. 244 (1966).

At that time the prohibition applied to "any contribution of money or other thing of value" by an agent of a foreign principal in connection with any primary or other election to any political office. 18 U.S.C. SS 613 (1970). The scope of the current statute, 2 U.S.C. SS 441e, clearly reaches beyond elections for Federal office, and the term contribution as used here expressly includes "money or other thing of value." Compare 2 U.S.C. SS 441a. Accordingly, the Commission concludes that a foreign national artist would be prohibited by 2 U.S.C. SS 441e from donating his uncompensated volunteer services to the Committee to create an original work of art for the Committee's use in fundraising.

The second question raised in your request is whether the contribution exception for uncompensated volunteer services provided by an individual to a candidate or political committee would apply in the specific situation you describe. This question is not reached since the Commission has concluded in responding to your first question that the foreign, national artist may not donate his volunteer services to the Committee for the purposes described in your request.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. SS 437f.

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**Elton John**  
Rabobank Arena Theater and Convention  
Center, Bakersfield, CA  
Fri, Apr 18, 2008 08:00 PM

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# Federal Election Commission Advisory Opinion Number 2004-26

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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 20, 2004

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2004-26

Jan Witold Baran, Esq.  
Wiley Rein & Fielding LLP  
1776 K Street, NW  
Washington, DC 20006

Dear Mr. Baran:

This responds to your letter, dated July 7, 2004, requesting an advisory opinion on behalf of Representative Gerald C. Weller and his fiancée, Zury Rios Sosa, concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the participation of a foreign national in the activities of two affiliated campaign committees and a nonconnected multicandidate committee on a volunteer basis.

## Background

Representative Weller is a Member of the United States House of Representatives and is currently a candidate for re-election. Representative Weller maintains two affiliated campaign committees - Jerry Weller for Congress, Inc. and Gerald C 'Jerry' Weller for Congress - and is the honorary chair of Reform PAC, a nonconnected multicandidate committee (collectively, the "Committees"). On July 6, 2004, Representative Weller became engaged to be married to Ms. Rios Sosa, who is a member of the Guatemalan legislature.<sup>1</sup> Ms. Rios Sosa is not a citizen of the United States and does not have permanent resident status in the United States. You state that Ms. Rios Sosa plans to remain a citizen of

Guatemala and does not intend to apply for United States citizenship or for admission for permanent residence.

#### Question Presented

May Ms. Rios Sosa participate in the activities of the Committees, including decision-making, on a volunteer basis? Specifically, may Ms. Rios Sosa (1) attend Committee events; (2) participate in Committee events by speaking or by soliciting funds and support for the Committees; (3) participate in meetings with Representative Weller and Committee personnel regarding Committee events or political strategy; and (4) accompany Representative Weller to the fundraising and campaign events of other political committees, provided she has not made a contribution of her personal funds in order to attend?

#### Legal Analysis and Conclusions

Your request raises two separate legal issues. First, would Ms. Rios Sosa's proposed activities result in a prohibited foreign national contribution to the Committees, under 2 U.S.C. 441e(a)(1)(A), or, in the alternative, would they come within an exception for "volunteer activities"? Second, would Ms. Rios Sosa's proposed activities constitute participation by a foreign national in the decision-making of the Committees, which is prohibited by 11 CFR 110.20(i)?

##### 1. Foreign National Volunteer Activity

The Act and Commission regulations prohibit foreign nationals, directly or indirectly, from making a "contribution or donation of money or other thing of value . . . in connection with a Federal, State, or local election." 2 U.S.C. 441e(a)(1)(A). See also 11 CFR 110.20(b). However, the Act and Commission regulations also provide that "[t]he term 'contribution' does not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 2 U.S.C. 431(8)(B)(i). See also 11 CFR 100.74.

In Advisory Opinion 1987-25, the Commission addressed the issue of whether uncompensated volunteer services provided by a foreign national constituted a prohibited contribution. The Commission concluded that a foreign student's work for a campaign without compensation would not result in a contribution because the value of the uncompensated volunteer services was specifically exempt from the Act's definition of contribution.<sup>2</sup> Similarly, the

Commission concludes that Ms. Rios Sosa's performance of the proposed campaign-related activities you describe for the Committees without compensation would constitute exempt volunteer activity. Thus, these proposed volunteer activities would not result in the making or receipt of a prohibited contribution under the Act.

## 2. Foreign National Participation in Decision-Making

Commission regulations implementing 2 U.S.C. 441e prohibit foreign nationals from participating in the decisions of any person involving election-related activities. See 11 CFR 110.20(i). Such participation in decisions includes directing, dictating, controlling, or directly or indirectly participating "in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee." *Id.* This broad prohibition encompasses foreign national involvement in the management of any political committee, and its decisions regarding its receipts and disbursements in connection with Federal and non-Federal elections. *Explanation and Justification for Regulations on Contribution Limitations and Prohibitions*, 67 Fed. Reg. 69946 (Nov. 19, 2002). Therefore, Ms. Rios Sosa must not participate in Congressman Weller's decisions regarding his campaign activities. She must also refrain from managing or participating in the decisions of the Committees.

With regard to the four types of activities about which you inquire, the Commission concludes that Ms. Rios Sosa may, as an uncompensated volunteer, take part in these Committee activities as long as she does not participate in the Committees' decision-making processes. First, the Commission concludes that Ms. Rios Sosa may attend Committee events, such as campaign rallies, debates, other public appearances, and fundraisers. Second, as an uncompensated volunteer, she may solicit funds from persons who are not foreign nationals. As an uncompensated volunteer, Ms. Rios Sosa may also give speeches at Committee events. Third, Ms. Rios Sosa may attend meetings with Representative Weller and Committee personnel regarding Committee events or political strategy. She may not, however, be involved in the

management of the Committees.

Finally, Ms. Rios Sosa may accompany Representative Weller and attend fundraising and campaign events of other political committees, provided she does not make a contribution of her personal funds in order to attend. However, her participation in such events is subject to the same limitations detailed above that govern her participation in events of the Committees.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Bradley A. Smith  
Chairman

Enclosures (AOs 1987-25 and 1981-51)

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1 According to a press release published on Representative Weller's website, he and Ms. Rios Sosa plan to marry after the upcoming November election. See <http://weller.house.gov/News/DocumentSingle.aspx?DocumentID=4510> (visited on July 26, 2004).

2 Compare Advisory Opinion 1987-25 with Advisory Opinion 1981-51 (concluding that the Act prohibited an artist who was a foreign national from donating his uncompensated services as an artist to create an original work of art for a political committee's use in fundraising).